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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

SHERR-UNA BOOKER, an individual,
Plaintiff,

v.

C.R. BARD, INC., a New Jersey
corporation and BARD PERIPHERAL
VASCULAR, an Arizona corporation,
Defendants.

**PLAINTIFF'S MOTION *IN LIMINE* #5
AND MEMORANDUM IN SUPPORT
TO EXCLUDE REFERENCE TO
FAILURE RATES, COMPLICATION
RATES, PERCENTAGES AND
COMPARATIVE ANALYSIS OF
INJURIES BEYOND THOSE
PRODUCED IN COMPLAINT FILES**

(The Honorable David G. Campbell)

(Oral Argument Requested)

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION *IN LIMINE* TO
EXCLUDE REFERENCE TO FAILURE RATES, COMPLICATION RATES,
PERCENTAGES AND COMPARATIVE ANALYSIS OF INJURIES BEYOND
THOSE PRODUCED IN COMPLAINT FILES**

Plaintiff moves *in limine* for a pretrial ruling to preclude at trial evidence and argument relating to failure rates, complication rates, percentages, or comparative analysis of any injuries that were not produced to Plaintiff during discovery.

MEMORANDUM OF LAW

To date, Bard has only produced to Plaintiff adverse event reports ("AERs") and Medical Device Reports ("MDRs") relating to the following injuries that are associated

1 with its retrievable filters: death, perforation, tilt, fracture, and migration, *i.e.*, injuries
 2 relevant to the litigation. In turn, Plaintiff has only been afforded the opportunity to
 3 review, evaluate, analyze, and derive relevant raw data from the AERs and MDRs related
 4 to the above listed injuries. Therefore, Defendants reference to any injuries, failure rates,
 5 complication rates, percentages, or comparative analyses of injuries that are outside the
 6 scope of Defendants production to Plaintiff will unfairly prejudice her case and ultimately
 7 confuse the jury. As such, Plaintiff respectfully requests that any testimony of injuries or
 8 failure rates of injuries not produced in AERs and MDRs to Plaintiff must be excluded
 9 from trial under Federal Rules of Evidence 402 and 403.

10 RESPECTFULLY SUBMITTED this 26th day of January, 2018.

11 GALLAGHER & KENNEDY, P.A.

12 By: /s/ Mark S. O'Connor
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21 *Co-Lead/Liaison Counsel for Plaintiffs*

22 CERTIFICATE OF SERVICE

23 I hereby certify that on this 26th day of January, 2018, I electronically transmitted
 24 the attached document to the Clerk's Office using the CM/ECF System for filing and
 25 transmittal of a Notice of Electronic Filing.

26 /s/ Gay Mennuti